

EXHIBIT 7

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 KATHRYN TOWNSEND GRIFFIN,
5 HELEN McDONALD, THE ESTATE OF
6 CHERRIGALE TOWNSEND,

7 Plaintiffs,

8 v.

9 17 Civ. 5221 (RJS)

10 EDWARD CHRISTOPHER SHEERAN,
11 personally known as Ed
12 Sheeran, ATLANTIC RECORDING
13 CORPORATION, d/b/a Atlantic
14 Records, WARNER MUSIC GROUP
15 CORPORATION, d/b/a Asylum
16 Records, SONY/ATV MUSIC
17 PUBLISHING, LLC,

18 Defendants.

19 Conference

20 -----x
21 New York, N.Y.
22 June 29, 2018
23 10:08 a.m.

24 Before:

25 HON. RICHARD J. SULLIVAN,

Attala County, MS

APPEARANCES

FRANK & RICE, P.A.
Attorneys for Plaintiffs
BY: PATRICK R. FRANK, ESQ. (Present Via Speakerphone)
KEISHA D. RICE, ESQ. (Present Via Speakerphone)
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16t1grie

1 (Case called)

2 THE COURT: Let me take appearances. For the
3 plaintiff?4 MS. RICE: For the plaintiff, we have Keisha Rice,
5 Patrick Frank, and Katherine Viker.6 THE COURT: Good morning. And you're all together on
7 the one line?

8 MS. RICE: That's correct, your Honor.

9 THE COURT: So since there's three of you, let me ask
10 that whoever is speaking just identify themselves just so the
11 court reporter can make the correct attributions on the
12 transcript and so we can know who's talking, okay?

13 MS. RICE: Of course, your Honor.

14 THE COURT: Great. And then for the defendants, for
15 Mr. Sheeran?16 MR. ZAKARIN: Your Honor, Don Zakarin, and with me is
17 Ilene Farkas and Andrew Goldsmith.

18 THE COURT: Okay. Good morning to each of you.

19 And Mr. Sheeran is not coming today?

20 MR. ZAKARIN: He's on tour, your Honor.

21 THE COURT: Oh. Well, you know, New York's a nice
22 place to come to.23 Okay. We're here in connection with I guess a couple
24 of letters that I've received. I have a letter from the
25 plaintiffs on their contemplated motion to compel discovery,

16t1gric

1 and then I have a letter from the defendants on a contemplated
2 motion for summary judgment. And then just yesterday I
3 received a letter from SAS, and they're not here today. I
4 guess I didn't order them to be here. I had declined their
5 request to intervene. But they wrote a letter informing me
6 that they filed a new case. They're anticipating that that
7 case will be assigned to me as related, and they're asking me
8 to basically stay this case so that the new case can catch up.
9 And so defendants are opposing that request, but I guess it's
10 premature to deal with that since SAS is not even here.

11 MR. ZAKARIN: Your Honor, I sent a letter in response
12 last night, which you may not have received.

13 THE COURT: No, I got it. I received it last night.
14 So I guess we're not going to deal with that now, since they're
15 not here. I think it's unlikely I'm going to grant that
16 request.

17 So let's deal now with the letters that I do have and
18 with the parties who are here.

19 So for the plaintiff's motion to compel, the
20 plaintiffs are seeking to compel the production of documents
21 relating to international profits that were derived from the
22 song "Let's Get It On," as well as documents related to the
23 defendant's expert. With respect to the first of those, the
24 fact discovery, what I would call fact discovery related to
25 international sales, it seems to me that this is way out of

16t1grie

1 time.

2 So I'm not sure who for the plaintiffs is going to
3 cover this, but why are you making this request now when fact
4 discovery wrapped up in March, for the most part?5 MS. RICE: Thank you, your Honor. And good morning to
6 everyone. This is Keisha Rice.7 May it please the Court. The reason that we are
8 making this request now is because -- and we will be attaching
9 these to our motion to compel if we're allowed to go forward
10 with it today -- throughout the discovery process, the
11 defendants have, on multiple occasions, indicated to us that
12 they did have the information that we had requested, that they
13 were simply waiting to get it back from Mr. Sheeran. We have
14 extensive correspondence. And so there was never an instance
15 in which they said that they did not have it until very near
16 the end of the discovery process, and so the reason that we
17 waited this long is because there's been a continual
18 communication with us that they did have it, or the demo, and
19 so, you know, we waited until the last possible minute for them
20 to provide that to us, which they asked us to do. At one point
21 in time it was because Mr. Sheeran was touring and needed to
22 stop in order to get the information to them to get to us. So
23 there has been communication throughout and there have been
24 assurances from the other side that we will be attaching to our
25 motion that the demo with the date/time stamp and the metadata

16t1grie

1 to identify the location of the recording was requested, asked
2 for, and that the defendants at all times understood exactly
3 what we were asking for. In good faith, we took them at their
4 word and waited until the last possible moment, even up until
5 the very, very end of discovery, waiting to get that. And so
6 at this point in time they now decided that they don't have it,
7 they never had it, and so now there's the foregoing issue.

8 THE COURT: All right. Well, I mean, as a general
9 matter, I mean, if you're going to wait past the discovery
10 deadline, you're just sort of out of luck. But it seems to me
11 that you're making really two arguments. The first is that you
12 were promised a demo tape, it hasn't been produced, and because
13 it hasn't been produced, you are entitled to a presumption that
14 the infringement took place in the United States, took place
15 abroad, or some part of it took place here and that you're
16 entitled to therefore international profits. I just think
17 there's a huge leap here. Most of what you're asking for here,
18 in your letter, anyway, is records related to international
19 profits, right, from the song?

20 MS. RICE: Yes, your Honor, and that's because there
21 are other songs on the album that we have information and
22 evidence that were created while in the United States, and so
23 we find it very unlikely that this would be the one song on the
24 album that was not created in the United States. And so that
25 might be the leap that your Honor is talking about. But from

16t1grie

1 our communications to the defendants, we have on multiple
2 occasions told them about that, and that is exactly why they
3 have -- they wanted to basically bridge that gap and provide
4 the demo.

5 THE COURT: Okay. Who's covering this for the
6 defendants?

7 MR. ZAKARIN: This one is me, your Honor.

8 THE COURT: Okay. Just so they can know who's
9 speaking.

10 MR. ZAKARIN: This is Don Zakarin.

11 So let me try to deal with this sequentially. First
12 of all, where the song was written in any event is not a
13 predicate act under the law. But let's deal with it as if it
14 is a predicate act. There is no evidence that this song was
15 written in the United States. There is all of the evidence --
16 Ed Sheeran's sworn testimony; the actual original demo which he
17 transferred from the lost iPhone to his iPad, we've also now
18 located, your Honor, as well, on Amy Wadge's computer, which
19 was sent to her from the iPhone that day, so we have that
20 original.

21 THE COURT: That last one has not been produced yet?

22 MR. ZAKARIN: We only found out about it this week.
23 we're happy to give especially that to them as well.

24 We have the original recording which was made on
25 February 5, 2014, which is the original recording that is the

16t1grie

1 commercially-released recording two days after the song was
2 written in England.

3 So we have all of those facts. There are no facts
4 that even remotely suggest the song was written here.

5 But going to the predicate act, Ed Sheeran is signed
6 to a UK record company. Ed Sheeran is signed to a UK
7 publishing company. Rather than acts of infringement here,
8 facilitating and causing foreign profits that then flow into
9 the United States, it's actually the exact opposite. It is
10 foreign activities which enable the exploitation of the song
11 here. And they have been given all of the information relating
12 to the exploitation of the song here, even down to the
13 testimony of Atlantic Records, which is the US licensee, that
14 recordings sold in the US were manufactured in the US,
15 recordings sold ex-US were manufactured ex-US. There is zero
16 evidence that would support a predicate act exception. So all
17 they have is Ed Sheeran's iPhone on which he recorded the
18 composition when it was written on February 3 or February 4 --
19 that's as one day was turning into the next -- in 2014.
20 Because his iPhone is missing, despite the fact that he was in
21 the UK at the time and recorded it at the time, they say the
22 Court should conclude, because of the missing iPhone, that
23 actually everything occurred here, without the slightest
24 evidence, and indeed all of the evidence to the contrary.
25 There is no predicate act. There is no basis for it, and there

16t1grie

1 are no profits that flowed into this country from abroad.
2 There is money that flowed from this country to the other
3 countries, and they have that information.

4 THE COURT: Okay. I mean, Ms. Rice, I'll give you a
5 chance to respond to that.

6 MS. RICE: Your Honor, I think that we're -- I mean,
7 if they have now a recording that was recorded on the night
8 that it was created, as Mr. Zakarin says, going from one night
9 into the next morning, that was sent from Mr. Sheeran to
10 Ms. Wadge's computer that night, as he states, they're willing
11 to give us that, that would certainly have the metadata on it
12 that we are requesting.

13 THE COURT: All right. So Mr. Zakarin, you're not
14 opposing that. You're happy to give them that recording.

15 MR. ZAKARIN: Happy to, your Honor. All the other
16 evidence they have -- they have the original recording, they
17 have everything -- but we're happy to provide this as well. We
18 just have to request it from Ms. Wadge.

19 THE COURT: Why don't you do that, because that would
20 seem to be responsive to requests that were timely made.

21 I have to say it seems like a huge leap to me to infer
22 from the evidence or lack of evidence so far that there was an
23 infringement here, and that's going to be the crucial step to
24 getting this international revenue information, so I think it's
25 a long shot, that that's going to happen, but why don't you

16t1grie

1 take a look at what they're going to produce, and then if you
2 want to renew that motion, you can. But I think it's a long
3 shot, candidly. Okay, Ms. Rice?

4 MS. RICE: All right, your Honor. Thank you.

5 THE COURT: All right. The next motion is the
6 contemplated motion of the defendants for summary judgment.
7 Oh, no, I'm sorry. We forgot the second half of the discovery
8 dispute, and that's --

9 MS. RICE: Yes, your Honor.

10 THE COURT: -- plaintiffs are seeking materials
11 related to the defendant's engagement of their musicologist.

12 MS. RICE: Yes, your Honor.

13 THE COURT: The expert. And so the defendant's letter
14 indicates that "To the extent Dr. Ferrara, in forming his
15 opinions, relied upon any facts, data, or information provided
16 by counsel, that has been disclosed through his report." It's
17 not clear to me what exactly it is that is being sought here.

18 MS. RICE: Your Honor, this is Keisha Rice.

19 THE COURT: Yes.

20 MS. RICE: We are requesting invoices, transmittal
21 letters, all of the items that they have requested for us, from
22 the plaintiffs, that were also attached to the plaintiff's
23 expert report, but the invoices, and with respect to the
24 defendant, the invoices and the transmittal letters actually
25 speak to who engaged Dr. Ferrara. We have information from not

16t1grie

1 only emails and correspondence that took place at the
2 inception, basically, or at the notification of this potential
3 lawsuit back in 2015, that Mr. Ferrara may have actually been
4 engaged for another artist rather than particularly for --
5 rather than for this case. He may have been engaged for the
6 purposes of another case. And so we would like to get a little
7 bit more information about that. They requested the same
8 information from us for that exact same purpose, and so we just
9 would like to request that information so that we can find not
10 only the scope of work that was requested of Mr. Ferrara back
11 in 2015, with respect to this case, but also to see if
12 Mr. Ferrara was particularly engaged for this case, because
13 according to their own emails, that's not the case.

14 THE COURT: All right. I mean, your letter says that
15 you're seeking transmittal documents, contracts, invoices, and
16 any materials conveyed to the defendant's musicologist in
17 connection with his work on this case.

18 So who's carrying the ball for the defendants on this
19 one?

20 MR. ZAKARIN: I'll carry this one, your Honor. My
21 brief ceases at music. I turned it over to Ms. Farkas. But on
22 this stuff, I can still handle it, I think.

23 THE COURT: All right. So transmittal documents,
24 contracts, and invoices.

25 MR. ZAKARIN: Okay. We've told them precisely what

16t1gric

1 Dr. Ferrara has charged. We've given them all that
2 information. We've given them everything that they're entitled
3 to under the Federal Rules of Civil Procedure. What they are
4 talking about is privileged communications because --

5 THE COURT: Well, wait. Let's just talk about
6 transmittal documents.

7 MR. ZAKARIN: Everything that he's received, used in
8 his opinion is in his opinion and it's identified, piece by
9 piece.

10 Insofar as who retained him back in 2015 when they
11 made the claim, Sony/ATV is the US publisher for Ed Sheeran,
12 who had probably reached out to Dr. Ferrara, as his publisher,
13 to obtain an opinion, or at least a preliminary opinion, and
14 he's representing, in that capacity, the defendants. He's
15 representing Sheeran, who is signed to Sony/ATV UK. The claim
16 is brought in the US so the US publisher deals with it, and
17 Sheeran is the person, and it's clear, and we've told them, who
18 is paying Dr. Ferrara. What their claim seems to be, and
19 they've made this, is that Dr. Ferrara is somehow an employee
20 of Sony/ATV. He's not. He is a full-time professor at NYU.
21 He has been retained by Sony/ATV and other defendants in
22 copyright cases over the years -- writers, publishers, record
23 companies. He's also been retained by people who are suing
24 Sony/ATV and record companies and, indeed, is currently
25 representing some in an infringement case that we're actually

16t1gric

1 defending, so he is against us there. Nothing odd.

2 So I don't know what they're looking for. Insofar as
3 they say we asked for the same information, actually, we've
4 abandoned the request for any information relating to
5 transmittal or the time spent on a particular activity, which
6 was a prior art issue, your Honor. Prior art is one of the key
7 issues that Ms. Farkas will deal with. But Dr. Stewart, their
8 expert, has announced that he did X amount of work on looking
9 at prior art. We don't believe it's so. We asked for
10 information about that. We've abandoned that. They have all
11 of the prior art in Dr. Ferrara's opinion. They have
12 everything that the federal rules require and, indeed, more.
13 They have all the financial information in terms of payment. I
14 don't know what they're looking for.

15 THE COURT: Well, that's really the question. So for
16 you to tell me they have everything the rules require, that's
17 my call. I'm just trying to nail down, what are the documents,
18 what is the universe of documents and what are you declining to
19 produce? It sounds like you're not sure of that.

20 MR. ZAKARIN: And maybe Ms. Farkas can deal with that.
21 I think what they want that we're not producing is specific
22 letters or transmittals between us and Dr. Ferrara and his
23 invoices to us which say what he's specifically doing at any
24 particular point. They have in fact been informed what he has
25 charged and what he's been paid and what his rates are.

16t1gric

1 THE COURT: Okay. And so Ms. Rice, I guess I'll ask
2 you again, because I'm still not clear -- what is it that you
3 are seeking, that you think you're entitled to and --

4 MS. RICE: Your Honor, we are seeking the invoice
5 which would have the scope of work, not necessarily any
6 privileged communications, but it would have the scope of work
7 under which Dr. Ferrara would have been charged -- or would
8 have been asked to perform, and then we are also asking for the
9 transmittal letters that would have indicated all of that
10 information if it's not on the invoice. So if the invoice just
11 has how much he charges, that's something that Mr. Zakarin has
12 said that's something that's already been disclosed. If the
13 invoice does, however, have scope of work on it, then that's
14 something that we would like to see because we would like to
15 see the terms under which he was employed particularly for this
16 case.

17 And then your Honor, also, on the flip side of that,
18 for the transmittal letters, in the event that, like I said,
19 the invoice only has the price, the charge under which
20 Dr. Ferrara agreed to perform the work, the transmittal letters
21 would have the information that we would be able to determine
22 the scope of work from those as well, the same reasons that
23 they asked for that information from us, because that's what
24 you're able to determine from that. And simply because they
25 abandoned that request, doesn't mean that, you know, we're

16t1gric

1 abandoning that request, unless the Court finds it appropriate.

2 THE COURT: All right. So I don't even know if there
3 are transmittal letters. Are there transmittal letters? Is
4 there a transmittal letter?

5 MS. FARKAS: I'm not sure what they mean by
6 transmittal letters. There are communications between our
7 office and Dr. Ferrara about his analysis, which would be
8 privileged. His report details what he was hired to do and
9 what tasks he performed. His report also details -- and we
10 have produced everything, every piece of information and
11 document and piece of sheet music and recording that he relied
12 upon in rendering his report. So to the extent that there are
13 transmittals between Dr. Ferrara and our office -- and those
14 are the only transmittals of which I'm aware, and I was the one
15 primarily dealing with him -- they're all privileged
16 communications under the federal rules, as I understand it, so
17 it's unclear what possible relevance any of the communications
18 that they're seeking have to any issue in dispute. And for
19 what it's worth, they chose not to depose Dr. Ferrara. They
20 chose not to ask him any questions and are now, I guess,
21 through a letter to your Honor, trying to get discovery to
22 which they're not entitled.

23 THE COURT: But they're not entitled to it because
24 it's privileged. That's what you're saying.

25 MS. FARKAS: Yes, under --

16t1gric

1 THE COURT: But have you asserted the privilege and
2 have you prepared a privilege log? That's usually the way it
3 works, right? They ask for documents and you say no, you don't
4 get those documents because they're privileged and here's what
5 the documents are and here's the privilege that applies. So it
6 sounds like you haven't done that.

7 MS. FARKAS: We're happy to do it. They did not
8 provide any privilege logs to us either for any of the
9 communications that were, you know, between them and their
10 expert. To the extent that that would solve the issue, we're
11 happy to provide a privilege log, but it seems a bit
12 unnecessary to us and unclear what they were seeking other than
13 documents that are expressly covered under the rules.

14 THE COURT: Well, look, I'm still confused as to what
15 they're seeking. I'm not sure they even know what they're
16 seeking.

17 You're looking for letters from the attorneys to the
18 expert; that's what you're looking for, Ms. Rice?

19 MS. RICE: Yes, your Honor.

20 THE COURT: And you don't think those are privileged?

21 MS. RICE: No, your Honor, to the extent that they
22 outlined the scope of work. Now if they are letters that talk
23 about findings or perspectives or things like that, that's a
24 different matter. But we are looking for the -- and I'm glad
25 Ms. Farkas is there to speak on this because I can speak

I6t1gric

1 directly to her on this issue and identify exactly what we're
2 talking about. We are looking for the exact same documents
3 that she requested from Dr. Stewart during his deposition. She
4 requested transmittal letters, she requested an invoice. We
5 provided those actually by email to her during the deposition,
6 just for ease of, you know -- just so that she could have
7 everything. So those are the exact documents. It's not
8 nebulous at all. She knows exactly which documents we're
9 talking about -- the same ones she requested of Dr. Stewart.
10 Communications between us, nothing privileged, but just the
11 transmittal letters between us and Dr. Stewart. She wanted to
12 know what information was given to Dr. Stewart, what we said to
13 Dr. Stewart as to how we indicated to him what the scope of
14 work would be; not necessarily his findings, not necessarily
15 any privileged communication, but the outline of the scope of
16 work.

17 THE COURT: It seems to be pretty straightforward. I
18 don't know. So, Ms. Farkas, does that give you any insight as
19 to what they're seeking? I assume it's not a large number of
20 documents, and if you think they're privileged or there are
21 portions of them that are privileged, I guess you can assert
22 that privilege, but I think we've had trouble -- at least I've
23 had trouble -- figuring out what exactly we're talking about,
24 and I think maybe I have a better idea now than when I woke up
25 this morning.

16t1grie

1 So what I would propose is, maybe it makes sense for
2 you folks to talk, see if you can get to an agreement as to
3 what is discoverable. If there's a disagreement as to whether
4 it's discoverable in the first place or whether it's
5 privileged, then I think you can tee it up for me in a more
6 precise way, because right now it's sort of a generic request
7 over documents that I don't even know what it means and I don't
8 know what privilege would be asserted. So I think this, unlike
9 the other request, sort of came in while expert discovery was
10 still going on. It was wrapping up, but -- so I can't say that
11 this one is untimely.

12 So I guess that's what I'd be inclined to encourage
13 you to do and have you get back to me in ten days.

14 MS. FARKAS: That's fine.

15 MS. RICE: Yes, your Honor.

16 THE COURT: Then if you resolve it, don't worry about
17 it, but if that is an issue I'm going to need to resolve, why
18 don't you then write me a joint letter that lays out what the
19 dispute still is and what your respective positions are, okay?
20 So within ten days, is that okay?

21 MS. RICE: Yes, your Honor.

22 THE COURT: I just want to see what date that is.

23 MR. ZAKARIN: The 9th?

24 THE COURT: I guess the 9th. I don't know. Is that
25 all right? I know people may have vacations scheduled and

16t1grie

1 things like that. But this shouldn't take that long, I don't
2 think.

3 MS. FARKAS: Your Honor, could we have till the 11th?

4 THE COURT: Okay. That's fine. So by July 11th then.
5 If there is still a live dispute, you'll send me a joint
6 letter, and if not, then we'll all go our merry ways.

7 MS. RICE: All right, your Honor. Thank you.

8 THE COURT: Okay. So I think that then resolves, for
9 now at least, the discovery issues that were raised by the
10 plaintiff's letter.

11 So now let's talk about the defendant's contemplated
12 motion for summary judgment.

13 And so basically defendants are saying, we've got
14 enough here now to establish as a matter of law that these are
15 not similar, they're not sufficiently similar to justify this
16 action in the first place, right?

17 MS. FARKAS: That's right, your Honor. This is Ilene
18 Farkas speaking. So we have a copyright infringement case over
19 a musical composition, and in order to prove copyright
20 infringement, one of the things that the plaintiffs will have
21 to prove is that the two songs are what's called substantially
22 similar.

23 THE COURT: Substantially similar, yes.

24 MS. FARKAS: And one of the criteria for substantially
25 similar, first, is that the defendant has to have copied the

16t1gric

1 plaintiff's song, and we have ample evidence of the independent
2 creation of "Thinking Out Loud."

3 THE COURT: Right. And then that protectable elements
4 would have been poached, not just unprotected or
5 nonprotectable, right?

6 MS. FARKAS: Correct. Because as your Honor I'm sure
7 knows, not any copying is actionable, that it has to be
8 actually copying of protectable elements of expression that are
9 owned by the plaintiff. Here, you know, the plaintiffs, as the
10 Court probably is aware, only own a piece of "Let's Get It On."
11 They own about 22 percent of the song. The other copyright
12 owners have not joined in the action other than now, belatedly,
13 this Structured Assets.

14 And when you have a piece of music, you have various
15 types of copyrights. You have the copyright in the musical
16 composition and then there are also copyrights in the sound
17 recordings of that musical composition. Here, we're only
18 talking about the underlying musical composition, not any sound
19 recording thereof, and the sound recording copyrights will vary
20 depending on that particular performance and that particular
21 recording of the musical composition and what is included or
22 not included or added to that particular recording of that
23 particular composition. We're not talking about any sort of
24 sound recording here; we're only talking about the copyright
25 and the actual musical composition. And so we're not talking

I6t1gric

1 about the Marvin Gaye recording or any other recording of
2 "Let's Get It On."

3 So here, when the copyright was registered for this
4 particular musical composition, there was what's called a
5 government copy that was recorded with the copyright office.
6 In order to register a work, you have to not only fill out a
7 form and pay a fee, but you have to deposit that which you are
8 claiming is the copyrighted work with the copyright office as
9 proof of what the copyrighted work is. It's for public notice
10 and to memorialize that which you are copying. Here, what was
11 deposited with the copyright office was sheet music. The sheet
12 music contained vocal melody, lyrics, chord progression, and
13 the rhythm, the 4/4 meter of the song. And that's pretty much
14 it. In fact, that is it. There was no percussion in the
15 deposit copy, there was no bass line in the deposit copy.
16 Obviously Marvin Gaye's performance was not included in the
17 written sheet music or anything else that was added to that
18 particular -- or any other particular recording of this
19 particular music composition. It was embodied in the deposit
20 copy in the sheet music.

21 In terms of that sheet music, our expert, Dr. Ferrara,
22 who is a, you know, worldwide esteemed musicologist who's been
23 a musicologist and a music professor at NYU and heads the
24 department at NYU for decades, analyzed and compared the
25 deposit copy of "Let's Get It On" to "Thinking Out Loud" and

I6t1gric

1 found no actionable similarities, and we are confident that
2 anyone who analyzes the deposit copy against "Thinking Out
3 Loud" will find no actionable similarities. Plaintiffs don't
4 contend that the lyrics are similar. There's no claim there.
5 The vocal melodies are utterly different, despite their
6 expert's attempt to try and pad his report with a couple of
7 vocal similarities, and I will get to that in a moment. Rhythm
8 is not protectable, and their expert concedes that. So we're
9 down to a chord progression. The chord progression, which
10 their expert acknowledges is not protectable and if this case
11 were solely based on the chord progression, he would agree that
12 there is no claim --

13 THE COURT: But I'm pausing for a second because I'm
14 not sure I need experts to tell me what is and isn't
15 protectable. I don't really care whether an NYU musicologist
16 or some other musicologist thinks something is protectable or
17 not. That's my job, right?

18 MS. FARKAS: That is correct, your Honor. So maybe
19 I'm jumping too far when I say "protectable." Their expert
20 only identified these similarities between "Thinking Out Loud"
21 and "Let's Get It On." And we have put in ample evidence of
22 prior art that shows that this chord progression existed well
23 before Ed Townsend and Marvin Gaye wrote "Let's Get It On." In
24 fact, it's in rudimentary guitar books as a basic chord
25 progression, and in fact we've even, as your Honor will see on

I6t1gric

1 summary judgment, that we put one in that actually comments on
2 how common this is and even goes further and says that, you
3 know, clearly "Let's Get It On" did not create this chord
4 progression because it existed in all of these other songs and
5 identifies a few other songs.

6 So what we have here is the only similarity that has
7 really been identified by their expert is a similarity in a
8 chord progression that existed well before "Let's Get It On."
9 And the only other similarities that he arguably identifies in
10 his report are some similarities in certain plucked things in
11 the vocal melodies that even he acknowledges that in order to
12 find similarities, he has to delete large portions of these
13 notes to get them to line up, thus acknowledging that they're
14 not similar. And finding that, you know, if he's identified
15 nine, he acknowledges that four or five or sometimes six of
16 them are not similar. So we think that that is not indicative
17 of copying and is completely not supportive of any claim of
18 copying.

19 And even if this Court were to go a step further and
20 analyze the similarities that Dr. Stewart has identified in the
21 sound recording of "Let's Get It On" that are not contained in
22 the deposit copy, which we think is not proper on an
23 infringement case, we are ready to show and our expert will
24 show that these similarities are either not similar at all, and
25 we can show them just with objective criteria, or he is

16t1grie

1 ignoring the actual realities of the song.

2 Their expert, who by the way, has been criticized
3 several times by many courts with respect to the methodology he
4 uses and his failure to consider prior art, he has a habit of
5 manipulating the music in order to make it appear to be more
6 similar or ignoring large portions of the music. So what he
7 does here is he takes the -- what he calls the bass line, which
8 is not the bass line of the song and is actually the guitar
9 part of the song, that only is prevalent in the first 24
10 seconds of the song, and labels that as "the bass line" of the
11 song and then says that this is a similarity between the two
12 songs. What he does is he's taking the guitar part of the
13 song, taking the lowest notes of the guitar part, ignoring the
14 rest of the guitar part, which is utterly dissimilar, to
15 "Thinking Out Loud" and comparing those things. In doing so,
16 he's ignoring that at 24 seconds of "Thinking Out Loud" through
17 the rest of the song, the actual bass line comes in, which he
18 admitted in his deposition is not the same, and is in fact
19 significantly different than that which appears in the other
20 song.

21 So these are things that we will obviously flesh out
22 in our motion, but we are quite confident that this Court can
23 determine on a motion for summary judgment that there is no
24 actionable similarity between these two songs.

25 The only real remaining similarity that he identifies

16t1grie

1 is the drum pattern, which is a basic drum pattern, which is
2 not in the deposit copy of the song. So we believe it is
3 irrelevant because it was added during the production of the
4 sound recording and is not part of the musical composition, so
5 it's irrelevant. But even if this Court were to consider the
6 drum pattern, that too is a very basic rudimentary drum pattern
7 that exists in prior art, is in basic drum method books, and
8 their own expert has acknowledged that that in and of itself is
9 not indicative of copying.

10 So we have here two very different songs that at best,
11 contain similar chord progressions that there's no dispute are
12 not indicative of copying.

13 They may also argue that, you know, well, this Court
14 should throw up its hands because there are competing expert
15 reports and that just in and of itself precludes the Court from
16 granting summary judgment. Obviously we disagree based on
17 everything I just said, and there's ample authority for the
18 notion that simply because there are competing experts, that
19 does not preclude summary judgment and the Court can find that
20 there's no protectable expression at issue as a matter of law.

21 THE COURT: All right. There's a little bit of expert
22 discovery that may still be happening, but what remains to be
23 done is not going to affect any of this, right?

24 MS. FARKAS: I don't see how, no.

25 THE COURT: All right. And for the plaintiffs, who is

16t1gric

1 responding?

2 MS. RICE: Again, this is Keisha Rice, your Honor.

3 THE COURT: Okay.

4 MS. RICE: Your Honor, with respect, to the extent
5 that your Honor does feel that experts are necessary or at
6 least needed or to be allowed to be listened to in this
7 particular case, I think that we don't necessarily even get
8 there with some of the arguments that they made. However, I
9 will talk about some of the expert issues that Ms. Farkas has
10 discussed.

11 First and foremost, one of the reasons that
12 Dr. Stewart has identified the bass line and said that it is
13 present in the deposit copy is because when we did the
14 deposition of Mr. Sheeran and we asked him specifically, what
15 do you consider the bass line of the song, he says the lowest
16 part of the guitar. Well, if it's in the defendant's own
17 words, that's what he's determining to be the bass line, and
18 that is what's present in the deposit copy, then we really
19 don't need to go much further than that because he's actually
20 saying that, or affirming what we believe, that the deposit
21 copy does in fact have the bass line within its four corners.

22 Also, with respect to the rhythm and the drum section,
23 Mr. Sheeran actually, in a couple of his emails back and forth
24 that the defendants have turned over during discovery, also
25 specifically says that the drums in the song make it sound like

I6t1grie

1 "Let's Get It On." And so again, we don't really need to get
2 to expert reports for those kinds of things that are reinforced
3 by the defendant's own testimony in deposition. However, to
4 the extent that we do get into the expert reports and
5 testimony, we do have Dr. Stewart saying that he has done an
6 analysis of the deposit copy. That analysis is present in his
7 report. He specifically talks about the comparisons as to what
8 Mr. Sheeran has said with respect to the bass line and the
9 drums. Those are not only present in the deposit copy --
10 because rhythm is not just the drums, it's also the syncopation
11 with which the chords are played, and that syncopation is
12 present in the deposit copy. So the syncopation does go toward
13 the rhythm as well.

14 We also have an analysis where Dr. Stewart has talked
15 about the comparison of the sheet music that is present or that
16 is on the internet that both Dr. Ferrara and Dr. Stewart did
17 download, and he talks about the similarities between the
18 deposit copy and the sheet music to "Let's Get It On" and does
19 a very thorough analysis of the similarities with respect to
20 the deposit copy, so in no way do the plaintiffs rely simply on
21 the sound recordings. We certainly believe that the sound
22 recordings -- we agree that it's copyrightable. We also agree
23 that the sound recordings also, you know, would be able to
24 withhold, or withstand -- would be able to stand on its own as
25 a document or as a recording that could be infringed and has

16t1gric

1 been infringed upon, so --

2 THE COURT: Wait a minute. Hold on.

3 MS. RICE: -- we feel very, very confident that there
4 are some pretty genuine issues of material fact here that would
5 help the plaintiffs not only survive summary judgment but, with
6 respect specifically to a copyright infringement case, not only
7 meet the standard of the ordinary person being able to listen
8 to the music and, just like some of the -- lots of responses on
9 the internet and on the media, and have been able to just --
10 the common man, the ordinary man hearing this and hearing the
11 similarities, but we also would reach the secondary step, which
12 requires that there's particular discernment that sometimes is
13 needed in order to determine sometimes protected and
14 unprotected works, and so in the event that your Honor finds it
15 appropriate that expert testimony and/or reports meet that
16 second step of discernment, we believe that we present enough
17 evidence to also be able to survive summary judgment on those
18 issues.

19 THE COURT: All right. I'm not sure I understood what
20 you were saying with respect to the sound recording. You're
21 saying that this inquiry is not limited to the deposit copy,
22 it's not limited to just the notes on a page, that this will
23 entail listening to two recordings and comparing them?

24 MS. RICE: Yes, your Honor, that is correct.

25 THE COURT: And what's your basis for saying that?

16t1grie

1 MS. RICE: Our basis for saying that is, first of all,
2 because the sound recording is an interpretation of the deposit
3 copy, not only would the sound recording be a representation of
4 what would be on the deposit copy -- to the extent that it's
5 different, it certainly may be an interpretation -- but it is a
6 very valid interpretation of the artist and the composer's
7 contemporaneous expression of the deposit copy, and so that's
8 why we believe that it certainly encompasses the sound
9 recording as well. We agree, to the extent that there may
10 be -- with respect to the sound recording, there may be
11 differences in -- not necessarily even differences. I think we
12 all agree on the percentages or proportionment of how much that
13 the law would, or in past cases has allowed, as far as
14 infringement rights of the plaintiffs with respect to the sound
15 recording, so I don't think that we necessarily agree with the
16 claim that the plaintiffs would only be entitled to portions of
17 anything that would be recoverable due to infringement, but to
18 the extent that we believe that the sound recording could be
19 considered and in play in this case, your Honor is correct,
20 that is the plaintiff's position.

21 THE COURT: All right. And you disagree with that,
22 Ms. Farkas, right, or --

23 MR. ZAKARIN: If I can, your Honor, I'll just address
24 it.

25 There's a reason why there's no law in their letter,

16t1gric

1 and we provided your Honor with the law that's clear, that the
2 metes and bounds of a copyright are what's deposited, whether
3 it's a recording that was deposited or sheet music that was
4 deposited. And it's not some interpreted expansion. Copyright
5 protects that which you claim and you register with the
6 copyright office. And what was registered here is sheet music.
7 So any embellishments, any changes, any bass line, anything
8 that Marvin Gaye added in the recording of that song is not
9 what's within the metes and bounds of their copyright. That's
10 what they want it to be, but that's not what the law is, and
11 that's why they didn't cite any case law in their letter.

12 THE COURT: Okay. And Ms. Rice, I guess what's your
13 response to that? What are you relying on to make this
14 argument that you've just articulated?

15 MS. RICE: Your Honor, we're simply arguing that, you
16 know, the sound recording is certainly also copyrightable and
17 so there would be -- to the extent that it's something that has
18 been copyrighted and deposited as well, along with the sheet
19 music that we all have copies of, then that would be something
20 on which we would also be bringing an infringement, or entitled
21 to damages under infringement claim. However --

22 THE COURT: Whoa, whoa, whoa, whoa.

23 MS. RICE: -- that's something that's kind of a little
24 bit above and beyond what we're really concentrating on, and I
25 think that a majority, at least of our argument, relies on the

16t1gric

1 issues and similarities with the deposit copy. We don't
2 necessarily need to go any further. But we believe that we
3 would be able to --

4 THE COURT: But I just want to be clear on the first
5 part of what you said. You're saying that a sound recording is
6 copyrightable, which of course it is, but you're saying it's
7 infringement to sound like it -- not to copy it but to sound
8 like it. That's your theory.

9 MS. RICE: No, your Honor. No, your Honor. I think
10 to the extent that there are things within the deposit copy
11 that could be expressed, in the same way that they are
12 expressed by the original artist, I think in that respect --
13 and so I don't believe that it's necessarily an infringement
14 upon the sound recording. We are arguing that in this
15 particular case, there's a difference between saying that
16 there's an infringement on the sound recording and saying that
17 there's an infringement on sound interpretation of the deposit
18 copy. We are saying that there certainly is a sound
19 interpretation infringement of the copy. However, you know, we
20 don't necessarily need to rely on that. We believe that on the
21 deposit copy in and of itself, we have an ample analysis with
22 not only Mr. Sheeran's remarks and his own testimony, but also
23 with our expert analysis, that the deposit copy in and of
24 itself well represents the intentions of the plaintiffs. So --

25 THE COURT: Okay.

I6t1gric

1 MS. RICE: I think those two things are a little bit
2 separated. I think there's a difference between our argument
3 about the sound interpretation of the deposit copy and the
4 copyrightable sound recording. And we're talking more about
5 the interpretation of the deposit copy, the sound
6 interpretation of the deposit copy.

7 THE COURT: Okay. I have no idea what you're talking
8 about, but I'm not going to ask you again.

9 I think clearly this is a motion that can be made. It
10 is, generally speaking, an uphill climb on summary judgment to
11 win, to have a Court make a finding that there's no substantial
12 similarity, but it happens, and so I think we'll see. I can't
13 say I'm that familiar with the songs. But I don't think you
14 need to be a musicologist and I don't think you need to be that
15 familiar with the songs to be able to determine whether there's
16 substantial similarity or not.

17 So I guess I'll see what you have to say. I'll see
18 what the experts have to say about similarity. I don't much
19 care what they have to say about the law. So be mindful of
20 that. If some musicology professor is going to pop off and
21 tell me what's protectable and what's not protectable, he or
22 she loses all credibility at that point. It makes me think
23 that they and their attorneys don't understand what is the
24 proper role of an expert.

25 But I think this is about sheet music, basically. So

I6t1gric

1 Ms. Rice, I think if you're going to press this point that
2 you've twice tried to articulate and twice I've not understood
3 what the heck you're saying, I think you're going to need to do
4 that in your papers.

5 All right. So let's talk about the schedule here.
6 Well, no. I'm sorry. There's another part of this motion now.
7 There's a motion for partial summary judgment with respect to
8 Ms. Griffin, right? It's sort of an interesting issue of
9 whether or not a California probate court is entitled to sort
10 of preclusive effect, *res judicata*, in a federal copyright
11 action. So do you want to be heard on that too?

12 MR. ZAKARIN: Your Honor, in raising the issue, we're
13 mindful of the notion that it may be viewed as some sort of a
14 collateral attack, as it were, on a determination that was
15 made, that we were not a party to, and indeed, would not have
16 had at the time standing because there was no interest that we
17 had. Indeed, "Thinking Out Loud" was not written for another
18 seven years thereafter. But the copyright law does have a
19 specific section which addresses succession.

20 THE COURT: Well, transfer of ownership. You're
21 talking about 17 U.S. Code Section 201 --

22 MR. ZAKARIN: Yes, your Honor.

23 THE COURT: -- (d)?

24 MR. ZAKARIN: Yes, and it refers to by intestate
25 succession and it refers to the laws of any particular state,

16t1gric

1 and the law in California, as we've articulated it, is that if
2 you're adopted, then you have no right to intestate succession.

3 Now the probate court in California, as we've
4 presented at least here, was presented without any information
5 that in fact Ms. Griffin was adopted at birth. We don't know
6 that she's actually Ed Townsend's natural daughter, but that's
7 not even the issue, whether she is. I mean, if there were
8 proof that she were, we would not be making the argument. But
9 even if that were the case, unless he affiliated her, she was
10 not his daughter at birth, she was adopted at birth, and under
11 law of intestate succession, she should not have been declared
12 an heir. They did not identify her as adopted. That seems to
13 be clear.

14 THE COURT: But this is a standing argument you're
15 making, right?

16 MR. ZAKARIN: Yes, because --

17 THE COURT: And Section 201(d) is not on standing at
18 all; it's just about transfer of ownership.

19 MR. ZAKARIN: But if she's not an owner of the rights
20 because under applicable law she was not entitled to be an
21 intestate successor, then she has no standing to sue for
22 infringement of that which she did not succeed to.

23 THE COURT: Right. But she's saying she does have an
24 interest, right? So she's saying that she is an owner. She's
25 saying she's an owner; you're saying she's not an owner.

16t1grie

1 You're pointing to the statute; she's pointing to a probate
2 court decision applying the statute. Right?

3 MR. ZAKARIN: The probate court decision did not apply
4 the statute. As far as I know, the probate court decision
5 determining that she was his heir was based upon --

6 THE COURT: So a probate court that is applying the
7 laws, the applicable laws of intestate succession --

8 MR. ZAKARIN: Yes, your Honor. Without being told
9 that in fact she was adopted at birth.

10 THE COURT: Not clear that the probate judge was told
11 or not told, right? I mean, there's certainly something in the
12 record there to indicate a reference to her adoption, right?

13 MR. ZAKARIN: There's a bill from two years earlier
14 which refers to a discussion between the attorney and her, I
15 think, but as far as I know, all of the forms that were
16 submitted, as far as we can tell, did not identify her as
17 having been adopted at all.

18 THE COURT: But I just want to be clear. So in your
19 reading of the copyright law, federal courts should be deciding
20 who's an heir and who's not an heir, and I should have experts
21 come in and do blood tests and DNA, and that's the function of
22 the federal court.

23 MR. ZAKARIN: No, your Honor. I think that goes
24 further than --

25 THE COURT: That would be great fun, I guess, but I

16t1grie

1 just have never heard that ever, ever happening.

2 MR. ZAKARIN: It goes further than we suggested, and
3 as we said in the letter, and I'm mindful of this, which is
4 that it is an uphill battle because it is a probate court
5 decision and your Honor would be, in effect, put in the
6 position of assessing, is this probate court decision
7 appropriate. It's a secondary argument for us on a standing
8 argument, and --

9 THE COURT: I guess --

10 MR. ZAKARIN: -- I raise it as an argument, and I'm
11 prepared, your Honor, not to ultimately pursue it, even though
12 I believe we're correct on it, because I'm much more focused
13 on, and I want to keep the purity of, the summary judgment with
14 respect to infringement, because I think that is the larger
15 issue. That secondary issue as to whether she is or is not
16 entitled to participate, to pursue an infringement claim, is a
17 secondary issue that we would only get to if your Honor did not
18 conclude that summary judgment as to a finding of no
19 infringement is appropriate. So --

20 THE COURT: All right. Is this a defense or is this a
21 standing argument?

22 MR. ZAKARIN: It is ultimately I think a standing
23 argument whether she is an heir with standing to pursue an
24 infringement claim.

25 THE COURT: Well, in other words, if she is not the

16t1gric

1 owner, that's the defense too, right? In other words --

2 MR. ZAKARIN: I mean, I guess that's right, but maybe
3 it is quasi-standing, quasi--you don't have a fight. Maybe it's
4 in a sense you failed to state a claim because you're not,
5 under the law of California, entitled to have succeeded under
6 intestate succession to Townsend's interests.

7 THE COURT: But one of the elements for a copyright
8 infringement claim is that you are the owner or that the
9 ownership interest has been transferred to you, right?

10 MR. ZAKARIN: You have a beneficial -- in this case it
11 would be beneficial ownership interest in the copyright, that
12 is correct. But beneficial ownership interest in this context,
13 because they are not owners of the legal title but they are
14 entitled to royalties derived from the exploitation.

15 THE COURT: All right. But it's the same inquiry.
16 Whether you call this a defense or you call it a standing
17 argument, it's going to be whether or not this person is an
18 heir. The statute talks about that being bequeathed or passed
19 as personal property by applicable laws of intestate
20 succession. No question that the estate of Mr. Sheeran was in
21 California, right? Mr. Townsend. Not Sheeran. Sheeran is
22 still with us.

23 MR. ZAKARIN: Yes.

24 THE COURT: Sorry.

25 MR. ZAKARIN: As far as we know, yes.

16t1grie

1 THE COURT: So it's California law. You're saying I
2 should just look to the language of the statute, which says
3 that a person who's adopted is not entitled to inherit; and
4 they're saying, well, you should look to a state court that
5 said she is the heir. Right?

6 MR. ZAKARIN: Pretty straightforward legal issue, and
7 she has acknowledged -- there is no, I think, factual
8 dispute -- that she was adopted.

9 THE COURT: Okay. So you want to develop that or you
10 don't want to develop that in your motion?

11 MR. ZAKARIN: I mean, your Honor, we'll develop it.
12 As I said, it's a secondary point. We will present it as an
13 undisputed fact: Here's what the statute says, here's what
14 California law says. And that tees up the precise question,
15 which is, is it the law or is it a determination of probate
16 court that decides it, which I think is a fairly narrow issue.

17 THE COURT: Okay. So I guess you folks should look at
18 the case of *Riley v. New York Trust Co.*, Supreme Court,
19 315 U.S. 343, which I guess deals with the issue of whether or
20 not a probate court judgment in one state is entitled, under
21 the full faith and credit clause, to being respected in another
22 state. The facts are distinct from here, but I think it might
23 be relevant.

24 MR. ZAKARIN: Thank you, your Honor.

25 THE COURT: Okay. Ms. Rice, I don't know if you're

16t1gric

1 carrying the ball on this one too. Do you want to be heard, or
2 do you want to just brief it?

3 MS. RICE: Your Honor, I think that, you know, with
4 respect to that issue, especially if it's something that they
5 may or may not develop or continue to pursue, I think that we
6 will probably just go ahead and stand on our briefs.

7 THE COURT: Okay. Well, I mean, look, if they want to
8 develop it, then you should respond to it. I mean, I think the
9 point on this *Riley* case is that one of the factors, one of the
10 things that the Supreme Court talks about is that, well, where
11 folks in New York or in another state wouldn't have standing to
12 come into this case, Georgia, to be heard in the probate court,
13 that's part of the analysis as to why the Georgia probate court
14 decision is not entitled to protection under the full faith and
15 credit clause with respect to property that's outside of
16 Georgia. Take a look at it. I think it's worth looking at.
17 There might be other cases as well, but that's one that my law
18 clerk found and brought to my attention.

19 MS. RICE: Well, your Honor, to the extent that they
20 do decide -- as your Honor just said, that they do decide to
21 continue to develop it, then we are certainly happy to discuss
22 it. Although we are certainly willing to take a look at the
23 cite that your Honor just gave, in this particular instance we
24 believe that the Rooker-Feldman doctrine was something that
25 would perhaps maybe eliminate the need or eliminate the request

16t1grie

1 from the defendants of this Court to take a look at a state
2 court finding and a state probate court as to the disposition
3 of property and/or the transfer of property that had already
4 been determined by a state probate court. However, we're
5 certainly willing to take a look at the case that your Honor
6 has mentioned and happy to respond accordingly.

7 THE COURT: Okay. Well, I mean, I think they're going
8 to do the first round of briefing, so you're going to respond
9 to whatever they decide to rely on.

10 MS. RICE: Yes, your Honor.

11 MR. FRANK: Your Honor, this is Patrick Frank on
12 behalf of the plaintiff. Can I make just one more point.

13 THE COURT: Sure.

14 MR. FRANK: I think respectfully, with respect to
15 opposing counsel, I think that this whole argument is sort of
16 proceeding from a misnomer, or a misapprehension of the
17 California probate code. The purpose of the provision that
18 they're relying upon, the issue as to whether an adoption of a
19 biological child precludes or cuts off their ability to come
20 back later in an intestate probate proceeding, that is
21 something that -- that statute can only be invoked by the other
22 beneficiaries to the estate when there's no will. It's
23 intestate. So in this instance, we had two heirs to the
24 estate. We had Cherrigale Townsend, who was Mr. Townsend's
25 wife, and we had Helen McDonald, who was his sister, and what

16t1grie

1 they're suggesting in this instance is that Ms. McDonald and
2 Ms. Townsend somehow conspired to dupe the probate court in
3 California into letting Kathy Griffin become an heir, but if
4 you look at that, take it to its logical conclusion, they're
5 basically saying that Ms. McDonald and Ms. Townsend duped the
6 probate court so that they could get a smaller share. So they
7 would have no incentive to do so. They would be the only
8 persons who had the requisite standing in that probate
9 proceeding to say, hey, we don't want this person to be a
10 beneficiary because she was adopted.

11 So I don't even think they have the ability to provoke
12 that particular provision. I think they're misinterpreting it.
13 And in the practical, real-world terms, it just doesn't make
14 any sense. Why would two beneficiaries conspire so that they
15 could get a lesser share?

16 So I just wanted to put that in for food for thought,
17 your Honor.

18 THE COURT: Okay. Well, look, I think it's an
19 interesting issue, but I think it's really a sideshow in terms
20 of, the main event here is whether or not this is an infringing
21 work, and I think that's really the main point that the
22 defendants are pushing, so if I were to agree with them on that
23 motion, I wouldn't even get to this other one, but it was the
24 subject of a letter, so that's why we're discussing it. So
25 defendants should decide whether or not they want to pursue

16t1gric

1 that alternative, lesser motion, which would only affect one of
2 the plaintiffs.

3 So let's talk about timing now. How long do you think
4 it will take you to make your motion?

5 MR. ZAKARIN: Your Honor, subject to what happens with
6 this exchange of correspondence by July 11, we had contemplated
7 a schedule that would have us making the motion by July 26,
8 with their response due by the latter part of August, and
9 because of the Labor Day holiday and the Jewish holidays in the
10 early part of September, we were proposing reply September 18.
11 And something along those lines would work for us.

12 THE COURT: Okay. Ms. Rice, are you okay with that?

13 MS. RICE: Yes, your Honor.

14 THE COURT: Okay. So July 26, which is a Thursday.
15 Go with the 27th.

16 MR. ZAKARIN: 27th is fine.

17 THE COURT: So July 27th.

18 MR. ZAKARIN: I blame Ms. Farkas for this.

19 THE COURT: And then --

20 MS. FARKAS: I thought you wanted a long weekend.

21 MR. ZAKARIN: No.

22 THE COURT: So then we could do August 27th, which is
23 a Monday, or the 28th, which is a Tuesday, or I don't care.

24 Ms. Rice, do you have a view? I mean, I'm mindful of
25 the fact that lawyers are people, lawyers have families,

16t1gric

1 lawyers sometimes take vacations too, so I'm willing to be
2 flexible in light of the season. But you tell me, Ms. Rice.
3 Is that enough time?

4 MS. RICE: Your Honor, I believe that is enough time.
5 If we could do the Tuesday, that would be --

6 THE COURT: Okay. The 28th. August 28th.

7 And then September 18th, in light of other things,
8 you're okay with for the reply? That's a Tuesday also.

9 MR. ZAKARIN: We're okay with that.

10 THE COURT: I meant Ms. Rice. Normally I would give a
11 week or ten days for a reply, but you're saying because of
12 Labor Day, summer stuff, and then Jewish holidays, you need a
13 little more time. So that's the 18th. You're okay with that,
14 Ms. Rice?

15 MS. RICE: Yes, your Honor.

16 THE COURT: Okay. So I'll issue a short order just
17 memorializing that as well as the fact that you folks are going
18 to get back to me if there's going to be a further follow-up on
19 the discovery issue, the expert discovery issue.

20 Okay. Anything else we should cover today?

21 No?

22 MS. RICE: Nothing for plaintiffs, your Honor.

23 THE COURT: All right. Thanks very much. If anyone
24 needs a copy of the transcript, you can take that up with the
25 court reporter. Let me thank the court reporter, as always,

16t1gric

1 for her time and her talent. I think I have another matter
2 now, so if you want to get a copy of the transcript, you should
3 take that up with the court reporter through the website rather
4 than in person. Okay?

5 ALL COUNSEL: Thank you, your Honor.

6 THE COURT: Great. Thanks very much. Have a nice
7 day, enjoy the weekend and the summer.

8 MR. FRANK: Thank you for your time, your Honor.

9 THE COURT: Thank you.

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